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IN THE
Supreme Court of the United States

OCTOBER TERM, A. D. 1946.

Nos. 185-186

ANCHOR SERUM COMPANY, a corporation of Missouri,
vs. *Petitioner,*

AMERICAN COOPERATIVE SERUM ASSOCIATION,
a corporation of Iowa,
Respondent.

ILLINOIS FARM BUREAU SERUM ASSOCIATION,
a corporation of Illinois,
Petitioner,

vs.
AMERICAN COOPERATIVE SERUM ASSOCIATION,
a corporation of Iowa,
Respondent.

ANCHOR SERUM COMPANY'S SEPARATE PETITION
FOR REHEARING OF THE ORIGINAL JOINT PETI-
TION FOR WRITS OF CERTIORARI.

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*To the Honorable, the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

This petitioner submits that the original petition either failed to clearly or fully present the grounds and reasons for this Court to take jurisdiction or that this Court overlooked or misapprehended certain material matters therein contained. Petitioner therefore presents this petition for a rehearing of the original petition for writs of *certiorari*. In so doing, this petitioner adopts and makes a part hereof said original petition.

I.

**THE JUDGMENT RENDERED BY THE MAJORITY OF
THE CIRCUIT COURT OF APPEALS DEPRIVES
PETITIONERS OF THEIR PROPERTY WITHOUT
DUE PROCESS OF LAW.**

In the presentation of this question, for the sake of argument only, and for no other purpose or purposes whatsoever, it can be admitted that the acts of both petitioners were unlawful and in fact violated the Robinson-Patman Act. It can further be admitted, for the same purpose, that no immunity under the Serum and Virus Act was created in favor of the petitioners. It is submitted, however, without fear of successful contradiction that the evidence tending to establish that petitioners violated the Robinson-Patman Act is no evidence whatsoever that the acts of the petitioners, of which the respondent complains, in any way damages the respondent or in any way necessitated or required the respondent to reduce the selling price of its serum.

We again assert without fear of successful contradiction that it is settled beyond peradventure by the decisions of this Court and of the other federal courts in the Union rendered pursuant thereto, that no litigant can recover damages from a defendant based only upon the premise that the defendant's acts, of which complaint is made, were unlawful or in violation of the federal law.

It is equally well settled that to entitle such a litigant to recover, the litigant has the burden in such actions to prove by creditable evidence, clearly and convincingly, that the unlawful acts of the defendant or defendants which were in violation of the federal act directly damaged the plaintiff, and with equal clarity the amount of such damages. (See

cases cited on page 16 of this petition.) This is especially true where a litigant sues to recover high penal damages, such as triple damages under the anti-trust laws.

The only evidence of any kind and character introduced by respondent attempting to prove that the alleged wrongful acts of petitioners damaged respondent was the testimony of respondent's president and assistant sales manager to the effect that some of their Illinois druggists, whether they be called dealers or warehousemen, complained that they could not sell respondent's serum because the Farm Bureaus in Illinois were selling serum at 65¢, and that these officers, acting for respondent, instructed the druggists to meet the competition. (R. 242, 243, 279, 280, 284, 285, 293, 294.)

These witnesses never at any time talked to a single consumer who was a customer, patron or alleged and purported member of respondent. (R. 313 to 315, inclusive.) This evidence could rise to no higher dignity than these witnesses testifying as to what their druggists told them as to what their alleged customers, patrons or members said. It was properly classified by Judge Major in his dissenting opinion as being hearsay heaped upon hearsay. If any part of this testimony rises out of the ranks of hearsay heaped upon hearsay, and it was very slight at that, it amounted to nothing more than the opinionated, self-serving statement of these witnesses.

Although respondent's druggists or dealers were accessible at the time of the trial, as were also its alleged customers, patrons and members, the respondent never called as a witness a single druggist or single customer or member. The reason is obvious. Evidently the plaintiff could not prove by any druggist or any customer of serum that the activities of the County Farm Bureaus in selling serum to their members affected in any way the sale of respond-

ent's serum. Certainly had such condition and facts existed, clear, direct and positive evidence could have been procured from the lips of these druggists and from these customers or members who were in any way affected by the price at which the Illinois Farm Bureaus sold to their members only.

Practically the most of this hearsay and incompetent testimony was given by respondent's president, who stood before the court below and stands now in this record discredited and impeached, as will be shown in the succeeding point.

It will likewise be shown in the succeeding point that all the creditable evidence with any probative force and effect establishes that the acts of the petitioners, of which complaint is made, in no way damaged the respondent or necessitated or required respondent to reduce its price.

As we contended in our original petition, it is undoubtedly true that under the principles announced by this Court in the case of *Buckeye Powder Co. v. Dupont De Nemours Powder Co.*, 284 U. S. 55, 63 L. Ed. 123, this hearsay, opinionated evidence was not admissable in any way as evidence that the acts of petitioners damaged the respondent. There is not a scintilla of evidence that any customer, patron or purported member of respondent ever ceased buying respondent's serum and purchased serum from the Illinois Farm Bureaus, or refused to purchase respondent's serum at 75¢. Neither is there any evidence that druggists actually ever sold respondent's serum for less than 75¢ to respondent's customers or purported members.

In fact, unless purchasers were members of the Farm Bureau, they could not purchase serum from them. Therefore, there was no necessity for the introduction of any evi-

dence to show the motive of any alleged customer, patron or purported member of respondent in ceasing to buy respondent's serum. Even if it had been competent for that purpose, it would still be of no force and effect as evidence to show that the acts of which complaint is made damaged the respondent or necessitated respondent reducing its selling price.

Clearly, therefore, with the exception of this incompetent hearsay evidence, a search of the record with a magnifying glass will fail to disclose another scintilla of evidence showing or tending to show that the acts of the petitioners in any way damaged respondent. This must be conceded. A careful reading of respondent's brief in resistance to the original petition will show that it likewise failed to call the court's attention to a single scintilla of evidence other than this hearsay evidence, and which is set out on page 18 of respondent's brief. The evidence cited in respondent's brief to sustain respondent's contention that petitioners' acts violated the Robinson-Patman Act is evidence in no way that these acts damaged the respondent. If the record contains any other evidence on this question, respondent concededly did not call it to the attention of this Court in its brief of resistance.

We submit that for the judgment of the majority of the Court of Appeals to become final, these petitioners' property, in violation of the Federal Constitution, will have been taken without due process of law.

We further submit that this constitutional question makes it imperative for this Court to take jurisdiction and grant the writs of *certiorari*, for otherwise the door will be wide open for nefarious litigants with avaricious desires and itching palms and with a conscience easily comforted to prey upon the legitimate business interests of our Nation.

II.

**PETITIONERS BY THE JUDGEMENT OF THE
MAJORITY OF THE COURT OF APPEALS WERE
DENIED A TRIAL BY JURY AS GUARANTEED BY
THE SEVENTH AMENDMENT TO THE FEDERAL
CONSTITUTION.**

Certainly it must lie within the realms of a truthful statement to say that if the record in this case presented a question of fact for the determination of a jury, then petitioners by the judgment complained of have been denied a trial by jury.

In the case of *Gunning v. Cooley*, 281 U. S. 90, 74 L. Ed. 720, this court on page 94 of 281 U. S. and page 724 of 74 L. Ed. said:

"Issues that depend on the credibility of witnesses, and the effect or weight of evidence are to be decided by the jury." (Emphasis ours.)

In the case of *Story Parchment Co. v. Patterson Parchment Paper Co.*, 282 U. S. 555, 75 L. Ed. 544, this Court reversed the judgment of the Circuit Court of Appeals for the First Circuit, which vacated a judgment of the District Court of the United States for the District of Massachusetts in favor of the plaintiff, which was a suit brought for triple damages under the anti-trust laws. This Court affirmed the judgment of the lower court rendered upon a verdict of the jury and on page 566 of 282 U. S. and page 550 of 75 L. Ed. said:

"Whether the unlawful acts of respondents or conditions apart from them constituted the proximate cause of the depreciation in value, was a question, upon the evidence in this record, for the jury, 'to be determined as a fact, in view of the circumstances of fact attending it.' Milwaukee & S. P. R. Co. v. Kellogg, 94

U. S. 469, 474, 24 L. ed. 256, 258. And the finding of the jury upon that question must be allowed to stand unless all reasonable men, exercising an unprejudiced judgment, would draw an opposite conclusion from the facts." (Emphasis ours.)

In the case of *The Richmond & Danville Railroad Co. v. Powers*, 149 U. S. 43, 37 L. Ed. 642, this court on page 45 of 149 U. S. and page 643 of 37 L. Ed. said:

"It is well settled that where there is uncertainty as to the existence of either negligence, or contributory negligence, the question is not one of law, but of fact, and to be settled by a jury; and this, whether the uncertainty arises from a conflict in the testimony, or because the facts being undisputed, fair-minded men will honestly draw different conclusions from them." (Emphasis ours.)

In the case of *The Sioux City & Pacific Railroad Company v. Stout*, 84 U. S. 657, 21 L. Ed. 745, this court many years ago on page 664 of 84 U. S. and page 749 of 21 L. ed. said:

"It is assumed that twelve men know more of the common affairs of life than does one man; that they can draw wiser and safer conclusions from admitted facts thus occurring, than can a single judge." (Emphasis ours.)

The question is therefore presented as to whether or not the judgment of the Court of Appeals in the case at bar, affirming the action of the District Court in setting aside the verdict of the jury in favor of petitioners and rendering judgment in favor of respondent n. o. v. violated these well settled principles of law. If the action of the Court of Appeals is contrary to and in direct conflict with these decisions of this Court, and these well settled principles of law, then clearly the judgment of the Seventh Circuit Court of Appeals denied petitioners their constitutional right of a trial by jury.

It therefore becomes necessary in order to fully present this constitutional and jurisdictional question, which we evidently failed to clearly do in the original petition, to analyze this case from a factual standpoint.

The analysis of the evidence presents the following factual picture.

The only evidence offered to show that petitioners' acts damaged respondent.

As we pointed out in the preceding division—

1. The only evidence offered by the respondent on this question was the incompetent hearsay, opinionated and self-serving evidence of the respondent's president Huff and assistant sales manager Davis to the effect that they received complaints of competition in that the Illinois Farm Bureaus were selling serum at 65¢ and respondent instructed the drug stores complaining to meet the competition and reduce the selling price of such serum to such drug stores from 63¢ to 53¢. (R. 293, 294, 242, 243, 284, 285, 289.) This constituted all the evidence offered by respondent on this question.

Respondent's President Huff stood in the court below and now stands discredited and impeached.

1. Huff first testified that he did not believe and could not recall any instance where respondent reduced its price in any other state than Illinois (R. 354) (This evidence, the trial court held admissible on the question as to whether respondent was required to reduce its prices in the State of Illinois on account of the Farm Bureau competition. R. 357, 358) Huff later admitted, on further cross-examination, that at least in certain towns in Iowa respondent made a reduction of 11¢ per 100 ccs. in its prices to the drug stores, among other things, to pay veterinarians to help and assist farmers to vaccinate and administer the

- serum, which he testified he classified as sales expense instead of expense for educational and promotional purposes. (R. 356 to 360, incl., 373 to 375, incl.)
2. Huff first testified that in Illinois when respondent reduced its prices to druggists from 63¢ to 53¢, it never increased the price. Later in his cross-examination he admitted that with reference to at least eight of respondent's drug stores, after respondent had made sales to them at 53¢, it made substantial sales at 63¢. (R. 336 to 353, incl.) With reference to one drug store, the Washburn Drug Store at Colfax, Illinois, after reducing its price to 53¢, it increased it from 53¢ to 63¢, at which price it sold this drug store, 302,875 ccs. (R. 351 to 353, incl.) This was one of the thirty-six drugstores for which respondent made claim for loss and damage. (R. 975 to 978, incl.)
 3. Huff first testified that he had personal knowledge of the prices at which manufacturers generally were selling serum to consumers, which was 75¢. (R. 243, 244) In cross-examination he admitted that when he so testified that all he knew was what their posted prices were. (R. 286)
 4. Respondent's President Huff first testified that he believed one or two of their druggists ceased purchasing respondent's serum and purchased from the farm bureaus, but later in cross-examination admitted that this was not true, but stated that the farm bureaus' prices was one of the arguments used by the druggists to get respondent's prices down. (R. 288, 289) The evidence is without dispute that neither the petitioner Illinois nor the farm bureaus sold serum to drugstores. (R. 580)
 5. A reading of the record will disclose the willingness of Huff to at all times testify to any fact he believed would aid respondent's cause.

**Respondent's evidence upon the amount of its alleged and
purported damages.**

1. The only evidence offered by the respondent was a tabulation "Plaintiff's Exhibit PP" prepared by and offered in evidence by the witness Taylor, a certified public accountant. (R. 332 to 335, incl. 975 to 978, incl.)
2. This witness, who knew nothing about the correctness or authenticity of the records, testified that in preparing this tabulation he did so under the instructions of Mr. Huff and took the information that Mr. Huff gave him and that he did not know when the pencil memorandums were made on the record showing that the price of serum had been reduced, or who made them. (R. 326) The respondent's President Huff was not under oath when he gave the instructions and information to the witness Taylor.
3. The witness Taylor admitted that with reference to eight drug stores respondent claimed a damage of 10¢ per 100 ccs. on more serum than the respondent sold to such drug stores during that particular period. (R. 317 to 326, incl., 332, 333)
4. The witness Taylor further admitted that with reference to eight other drug stores respondent's claim covered for serum sold at the reduced price of 53¢, which according to the entries in the books, by subsequent invoices had been increased to 63¢. The witness admitted that these increases had not been taken into consideration in the preparation of the tabulation "Plaintiff's Exhibit PP". (R. 323 to 326, incl.)
5. After these facts were developed in cross-examination, respondent in open court corrected the tabulation as to one of the drug stores for which it claimed a loss on more serum than it sold, and on the eight drug stores where the price had been increased by subsequent invoices. Respondent attempted to justify the claim made with refer-

ence to the other seven drug stores on more serum than they sold to such drug stores by credit memorandums, after which respondent's witness Taylor still admitted that the respondent with reference to these seven drug stores was claiming a reduction on more serum than was sold during the period in question and that he knew nothing about the authenticity of the credit memorandums. (R. 332, 333)

6. It was after these facts were developed in the cross-examination of the witness Taylor that respondent attempted to make any correction in the original tabulation. It is only reasonable to presume that there were other exaggerations which petitioners were not able to develop in cross-examination.
7. With reference to any reduction which might have been made by the respondent in Illinois, they certainly could have been made for the same purpose for which it reduced the selling price of its serum to drug stores in Iowa.

All creditable evidence shows that petitioners' acts did not damage respondent.

1. This case was tried at Chicago, Illinois, in close proximity to the place where all of respondent's druggists and its customers, patrons and alleged members lived. Not a single druggist or patron or purported member was called as a witness. Evidently because such druggist and witness could not and would not testify that the acts of the petitioners affected the sale of respondent's serum.
2. Not a single customer, patron or purported member of the respondent ever informed the respondent that they quit buying respondent's serum because they could buy serum elsewhere cheaper. (R. 313 to 315)
3. It is admitted that neither the respondent's president nor its Assistant Sales Manager Davis ever talked to a single one of respondent's customers or purported members; that their hearsay

testimony was what the druggists had told them. (R. 313 to 315)

4. There is not any competent evidence that a single one of the thirty-six druggists to whom respondent claims to have reduced its selling price, ever sold any serum whatever to a customer at 65¢ instead of 75¢.
5. It is just as reasonable to assume that these druggists procured a reduction of their price to increase their profits as it is to assume that they actually sold the serum at 65¢.
6. Respondent's President testified that respondent was not trying to sell to or procure the County Farm Bureaus' members. (R. 280)
7. The Farm Bureaus were engaged in selling serum only to their members. (R. 461, 580, 583, 584, 586, 401, 403, 404, 406, 435, 414.) If they made any sales to non-members they would not exceed 2% and would be made by error to former members not in good standing. (R. 580, 583, 584, 468) Only farmers who were members of both the Illinois Agricultural Association and the County Farm Bureaus were eligible to purchase serum through the Petitioner Illinois and its county farm bureaus. (R. 414)
8. As Petitioner Illinois was a volume contract purchaser, and as respondent had made no filings permitting and authorizing it to sell to volume contract purchasers, respondent was not engaged in competition with petitioner Anchor in the sales made by Anchor to Illinois.
9. During the years 1936, 1937, 1938 and 1939, the County Farm Bureaus' retail price to their members was constant and remained at 65¢ to their members. (R. 402, 403, 455, 456, 484, 485, 496) This had been fixed and determined in 1935. (R. 453 to 455)
10. The moneys received by Petitioner Illinois for services, advertising, educational and promotional work rendered, in no way affected the retail price of the different county farm bureaus to their members as their patronage dividends were always

higher than the amount of such compensation. (R. 1110 to 1114 incl.)

11. According to respondent's own testimony, it only reduced the selling price of its serum to certain Illinois druggists and did not to others. (R. 284, 285, 280)
12. In fifteen counties in Illinois respondent never reduced the selling price of serum to the druggists. In each of these counties, the Farm Bureaus were operating and in six of them they were operating in the same towns. (R. 407)
13. In thirty-five of the towns in which respondent claimed to have reduced the selling price, the Farm Bureaus did not operate in twelve of these towns. (R. 411 to 413)
14. During the period in question there were over 160,000 farmers in Illinois raising hogs. (R. 485)
15. Although the County Farm Bureau units had a membership ranging from 64,000 to 75,000 members, most of whom were raisers of swine, they only sold serum to from 19,000 to 20,000 members. (R. 403)
16. During the period in question, Fidelity Laboratories, a competitor of both parties hereto, increased their Illinois sales of 1,138,000 ccs. in 1937 to 1,564,000 ccs. in 1940. (R. 514)
17. During the period in question Petitioner Anchor increased its sales through its wholesaler, at its regular posted prices, at the National Stock Yards, from 2,289,750 ccs. in 1937 to 4,185,250 ccs. in 1939; (R. 161) and Petitioner Anchor increased its sales through its dealer in Illinois from 627,225 ccs. in 1937 to 991,025 ccs. in 1940. (R. 161)
18. Petitioners offered and were denied the right to prove that respondent's Illinois sales during the period in question increased from 2,523,625 ccs. in 1937 to 4,166,125 ccs. in the fiscal year from March 1, 1939 to February 29, 1940. (R. 618, 619)
19. While petitioner Illinois' sales in Illinois from 1937 to 1940 increased approximately 39%, the respondent's Illinois sales increased 65%. (R. 618, 619, 751)

20. During the time in question there were at least forty other manufacturers of serum in competition with both the respondent and the petitioners in Illinois, and it does not appear that they claimed any loss in their Illinois sales. (R. 362)
21. The contention of respondent that the petitioners sold all of the serum consumed in Illinois is only a mirage which must fade away in the light of the truth.
22. The increase in sales realized by respondent and all other handlers during the period of time must have resulted from the large and extensive educational and promotional work conducted by the petitioner Illinois and its County Farm Bureau members.

Certainly, it must be said that if there was no jury question presented, then respondent's President Huff is both the final arbiter of the facts and the final judge of the law.

In the light of the facts disclosed by the record, we submit that:

1. The credibility of respondent's witness and the effect or weight to be given their evidence were questions to be determined by triers of fact—the jury.
2. The credibility and the effect or weight to be given respondent's records was likewise a question for the jury.
3. Clearly the question whether petitioners' purported unlawful acts damaged respondent was for determination by the jury.
4. The action of the trial court in setting aside the verdict of the jury in favor of petitioners, and in rendering judgment N. O. V. for respondent, and and the action of the majority of the Court of Appeals in affirming this judgment, denied to these petitioners their constitutional right of a trial by jury.

III.

THE HOLDING OF THE MAJORITY OF THE COURT OF APPEALS THAT SECTION 13(b) OF TITLE 15, U. S. C. A. SHIFTED THE BURDEN UPON PETITIONERS TO PROVE THAT RESPONDENT'S DAMAGE, IF ANY, WAS CAUSED OTHERWISE THAN BY THE ACTS OF PETITIONERS OF WHICH COMPLAINT IS MADE, WAS A DEPARTURE FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS TO CALL FOR AN EXERCISE OF THIS COURT'S POWER OF SUPERVISION.

Respondent, in its brief of resistance, on page 28 admits that Section 13(b) is applicable only to proceedings before the Federal Trade Commission. By innuendo, respondent necessarily admits that Section 13(b) has no application in actions at law with reference to the burden of proof upon the question as to whether the defendant's action damaged the plaintiff.

Respondent attempts to distract from and to cover up this grave and serious error committed by the Court of Appeals by a discussion of Section 13(a), and by further discussing wherein lies the burden of proof in a case where a defendant pleads and attempts to prove justification of a discriminatory price under the provisions of Section 13(a).

Sufficient answer to this is found in that the Court of Appeals was not discussing or deciding where lay the burden of proof where a defendant was attempting to justify a discriminatory price. On the contrary, the Court of Appeals was discussing where lay the burden of proof as to whether petitioners' alleged wrongful acts did or did not damage respondent.

In doing this, the majority opinion of the Court of Appeals expressly held that Section 13(b) was applicable to actions at law and was controlling on the court, and further that under this section, the burden was placed upon petitioners to prove that respondent's damage, if any, was otherwise caused than by the acts of petitioners. [153 Fed. 2nd 907 at 912 R. 1254] The law of this Nation has been long and well settled contrary to the lower court's holding.

In the case of *Locker v. American Tobacco Co.*, 218 Fed. 447 (2nd C. C. A.), the court on page 448 said:

"It matters not that certain of the defendants have violated the provisions of the Sherman Act unless it be proved that such acts have injured the plaintiffs and caused them damages which can be recovered in an action at law." (Emphasis ours.)

In the case of *Keogh v. Chicago & N. W. R. Co.*, 260 U. S. 156, 67 L. Ed. 183, this court, in speaking of the right of recovery under the Anti-Trust laws, on page 165 of 260 U. S. and page 188 of 67 L. Ed., said:

*" * * * recovery cannot be had unless it is shown that, as a result of defendants' acts, damages in some amount susceptible of expression in figures resulted. These damages must be proved by facts from which their existence is logically and legally inferable. They cannot be supplied by conjecture."* (Emphasis ours.)

In the case of *Beegle v. Thomson*, 138 Fed. (2d) 875, (7th C. C. A.), the court, in speaking upon this question, on page 881 said:

"The mere existence of a violation is not sufficient ipso facto to support the action, for no party may properly seek to secure something from another without allegation and proof of facts demonstrating pecuniary loss springing from or consequent upon the unlawful act." (Citing cases.) (Emphasis ours.)

Also see cases cited and quoted in original petition and supporting brief, pages 34 to 36, inclusive.

This holding of the Court of Appeals was a grave radical and serious departure from the usual course of judicial proceedings. If it is to be followed as a precedent, it presents an important question of federal law which has not been but should be decided by this Court. It likewise presents a question of general national importance.

We therefore submit that this Court should grant writs of certiorari and correct such monstrous departure from the usual course of judicial proceeding.

IV.

THE IMMUNITY QUESTION.

The immunity question presented in the case at bar was not presented to and was not decided by this Court in the case of the *United States v. Borden & Company*, 308 U. S. 188, 84 L. Ed. 181. The only question decided in the *Borden case* was that the enactment itself of the Agricultural Marketing Agreement Act of 1937 created no immunity. These petitioners have never contended that the enactment of the Serum and Virus Act in itself created any immunity.

The question presented in this case is whether or not after the marketing agreement in question was entered into by the members of the serum and virus industry with the approval of the Secretary of Agriculture, and after the Secretary of Agriculture issued an order regulating the industry, and after a control agency was created and after the members of the industry filed their postings as to prices, terms of sale and discount, and after the industry was operating under the Serum and Virus Act, and

when a member of the industry sold its serum in accordance with its postings and prices, was such member immune from the Anti-trust Law or was such member subject to both the penalties of the Serum and Virus Act and the penalties of the Anti-Trust Law?

Petitioner Anchor's postings contained the provision that it spent liberal allowances for the purposes for which allowances and payments were made to petitioner Illinois. These postings were never suspended but always remained in full force and effect. As found by the Secretary of Agriculture, this provision was part of petitioner Anchor's public postings of prices, terms of sale and discount. This practice was acquiesced in by the control agency and indulged in by the other members of the industry. Even respondent's president admits that it was indulged in by the respondent.

We submit that this is an important federal question which has never been but should be decided by this Court. It is a question of general national interest affecting not only the members of the serum and virus industry but other branches of the agricultural industry operating under marketing agreements.

CONCLUSION.

This Court has always held inviolate the rights guaranteed by our Federal Constitution. This Court has in the past extended that protection to criminal aliens arrested in our country for espionage and even those citizens charged with treason.

Certainly, if a criminal alien and an unpatriotic citizen charged with treason are entitled to the constitutional protection, honest and respectable business organizations of our Nation are entitled to the same protection. We sincerely urge that there can be no doubt but what the judgment of the majority of the Circuit Court of Appeals not only deprived petitioners of their constitutional right of a trial by jury but that it deprives petitioners of their property without due process of law.

We sincerely believe that every member of this Court is thoroughly in accord with Mr. Chief Justice Marshall when he, many years ago, in the case of *Cohens v. Virginia*, 6 Wheat (19 U. S.) 264, at 404, 5 L. Ed. 257, at 291, said:

"It is most true that this court will not take jurisdiction if it should not; but it is equally true, that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the constitution." (Emphasis ours.)

Petitioners, believing that their constitutional guarantees have been denied them by the decisions of the lower courts, come to the only court whose doors remain open for relief.

Petitioners come to the door of the court created by our constitution for the protection of the wronged and oppressed.

We submit that this Court should vacate its order of October 14, 1946 denying the original petition and should grant the writs of certiorari as prayed in the original petition and supporting brief upon all the questions involved.

Respectfully submitted,

CLARENCE G. MYERS,
CHARLES F. SNERLY,
J. EUGENE LOEB,
BEN PHILLIP,

Attorney for Petitioner
Anchor Serum Company

I hereby certify that the foregoing petition is presented in good faith and not for delay.

Clarence G. Myers

CLARENCE G. MYERS